IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

Crl.MC.No. 1697 of 2007()

CC.639/2001 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI

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PETITIONER: ACCUSED

K.K.SUHARA, W/O.ABDULLA,
AGED 50 YEARS, R/AT C.C.5/72, NEAR JAIN
TEMPLE, PALACE ROAD, MATTANCHERRY, KOCHI-682 002,
ERNAKULAM DISTRICT.

BY ADV. SRI.TOM JOSE

RESPONDENTS: STATE AND COMPLAINANT

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1. SATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. P.M.ANWAR, S/O.MOIDEEN, AGED 46 YEARS,
R/AT.C.C.NO.7/481, MARAKKADAVU,
MATTANCHERRY, KOCHI-682 002, MATTANCHERRY VILLAGE,
KOCHI TALUK.

R1 BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 1697 of 2007

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Dated this the 28th day of May, 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the N.I. Act. The revisional court has upheld the verdict of guilty and conviction. The petitioner now faces the sentence of imprisonment till rising of court. There is however a further direction that the petitioner must pay an amount of Rs.1,25,000/- as compensation to the complainant and in default to undergo S.I. for a period of three months.

2. According to the petitioner, the matter has been settled between the parties subsequent to the revision petition. More importantly, it is submitted that an amount of Rs.1,25,000/- has already been paid as compensation by the petitioner to the complainant. The petitioner is willing to appear before the learned Magistrate and undergo the substantive sentence of imprisonment till rising of court. But the petitioner submits that the petitioner is not obliged to undergo the default sentence she having allegedly paid the

entire compensation amount of Rs.1,25,000/- to the complainant and the complainant having accepted the same in full satisfaction.

3. The petitioner has one more grievance. The petitioner has already deposited an amount of Rs. 25,000/- before the learned Magistrate. The petitioner wants to get it back. There is no direction by the courts below enabling the petitioner to get back the deposited amount of Rs.25,000/- The complainant is not entitled to that amount as the compensation amount of Rs.1,25,000/- has already been paid to the complainant. In these circumstances it is prayed appropriate directions may be issued.

4. No further directions appear to be necessary. If the entire amount of compensation has been paid and the complainant confirms the same, there can be no question of executing the default sentence. There is no default then as the direction is only to pay the amount to the complainant, which has allegedly been done. The said position has been made clear in the decision in **Girish** v. **Muthoot Capital Service (P) Ltd.** (2007 (1) KLT 16). In these circumstances I am satisfied that this petition can be allowed and necessary directions can be issued.

5. This Crl.M.C. is hence allowed in part. It is clarified that if the petitioner and the complainant appear before the learned Magistrate and confirm that the entire compensation amount of Rs.1,25,000/- has been paid by the petitioner to the complainant, there can be no question of executing any default sentence. If the petitioner and the complainant confirm to the court that the amount of Rs.25,000/-, which lies in deposit can be released to the petitioner, the learned Magistrate shall forthwith release such amount also to the petitioner.

(R. BASANT)
Judge

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